



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-831]

### Fresh Garlic from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from the Fresh Garlic Producers Association and its individual members (collectively, the petitioners), the Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of small and large garlic chunks from the People's Republic of China (China) are circumventing the antidumping duty (AD) order on fresh garlic from China.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Charles DeFilippo or Jacob Saude; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3979 or 202-482-0981, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On February 16, 2023, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(c), the petitioners filed a circumvention inquiry request alleging that small and large garlic chunks are circumventing the *Order*<sup>1</sup> and, accordingly, should be included within the scope of the *Order*.<sup>2</sup> On March 17, 2023, we deferred the decision to initiate

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<sup>1</sup> See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*).

<sup>2</sup> See Petitioners' Letter, "Petitioners' Request for Circumvention Ruling Pursuant to Section 781(c) of the Tariff Act of 1930, As Amended," dated February 16, 2023.

this circumvention inquiry until the ongoing scope inquiry regarding large and small garlic chunks from Green Garden Produce LLC was complete.<sup>3</sup> On April 13, 2023, Commerce officials held a videoconference and in-person meeting with counsel to the petitioners regarding their February 16, 2023, request that Commerce conduct a minor alterations circumvention inquiry.<sup>4</sup> On March 3, 2023, Commerce issued a supplemental questionnaire to the petitioners regarding their circumvention request.<sup>5</sup> On May 10, 2023, the petitioners submitted their supplemental questionnaire response.<sup>6</sup>

### Scope of the *Order*

The products covered by this *Order* are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay. A full description of the scope of the *Order* is provided in the Initiation Checklist.<sup>7</sup>

### Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers small and large garlic chunks produced in China and exported to the United States.

### Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege

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<sup>3</sup> See Memorandum, "Extension of Time to Determine Whether to Initiate Circumvention Inquiry," dated March 17, 2023.

<sup>4</sup> See Memorandum, "Meeting with Petitioners' Counsel," dated April 13, 2023.

<sup>5</sup> See Commerce's Letter, "Circumvention Inquiry Request Supplemental Questionnaire," dated May 3, 2023.

<sup>6</sup> See Petitioners' Letter, "Response to Supplemental Questionnaire in Circumvention Inquiry Request," dated May 10, 2023.

<sup>7</sup> See Initiation Checklist, "Initiation of the Circumvention Inquiry on the Antidumping Duty Order," dated concurrently with, and hereby adopted by, this notice (Initiation Checklist) at 7.

“that the elements necessary for a circumvention determination under section 781 of the Act exist” and be “accompanied by information reasonably available to the interested party supporting these allegations.” The petitioners alleged circumvention pursuant to section 781(c) of the Act (minor alterations of merchandise).

Section 781(c) of the Act provides that Commerce may find circumvention of an AD order when products which are of the class or kind of merchandise subject to an AD order have been “altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that “{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the AD order.”

While the statute is silent as to what factors to consider in determining whether alterations are properly considered “minor,” the legislative history of this provision indicates that there are certain factors which should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon “such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.”<sup>8</sup>

### Analysis

Based on our analysis of the petitioners’ circumvention inquiry request, we determined that the petitioners satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(ii), we have accepted the request and are initiating the requested circumvention

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<sup>8</sup> See S. Rep. No.71, 100th Cong., 1st Sess. 100 (1987) (“In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article.”). See also *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People’s Republic of China*, 74 FR 33991, 33992 (July 14, 2009), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 74 FR 40565 (August 12, 2009).

inquiry of the *Order*. For a full discussion of the basis for our decision to initiate the requested circumvention inquiry, *see* Initiation Checklist.

Furthermore, pursuant to 19 CFR 351.226(c)(2)(iii), the petitioners noted that Green Garden is the entity that imports small and large garlic chunks into the United States. While the petitioners stated that they are not aware of other exporters and/or producers exporting small and large garlic chunks to the United States, beyond those that supply Green Garden, they are concerned that there are numerous Chinese entities that could begin production of significant volumes of IQF garlic chunks for exportation to the United States. Therefore, given the ease with which other Chinese exporters and/or producers could engage in the same activities as those supplying Green Garden, Commerce is initiating this circumvention inquiry on a country-wide basis.

#### Respondent Selection

Commerce intends to base respondent selection on U.S. Customs and Border Protection (CBP) data. Commerce intends to place the CBP data on the record within five days of the publication of the initiation notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after placement of the CBP data on the record of the relevant inquiry.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

#### Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce intends to notify CBP of this initiation and direct CBP to continue the suspension of liquidation of entries of products subject to this circumvention inquiry that were already subject to the suspension of liquidation under the *Order* and to apply the cash deposit rates that would be applicable if the products were determined to be

covered by the scope of the *Order*. Should Commerce issue affirmative preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

#### Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(c) of the Act, Commerce determines that the petitioners' request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether small and large garlic chunks produced in and exported from China are circumventing the *Order* and the opportunity to comment on any additional entities that import small and large garlic chunks to the United States. In addition, we have included a description of the products that are the subject to this inquiry and an explanation of Commerce's decision to initiate this inquiry as provided in the accompanying Initiation Checklist.<sup>9</sup> In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary circumvention determination no later than 150 days from the date of publication of the notice of initiation of this circumvention inquiry in the *Federal Register*.

This notice is published in accordance with section 781(c) of the Act, and 19 CFR 351.226(d)(1)(ii)

Dated: June 1, 2023.

**Lisa W. Wang,**  
*Assistant Secretary*  
*for Enforcement and Compliance.*

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<sup>9</sup> See Initiation Checklist at 4 and 6.